

Message Text

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ACTION L-02

INFO OCT-01 ISO-00 IO-10 AF-10 ARA-10 EA-10 EUR-12 NEA-10

RSC-01 SSO-00 NSCE-00 INRE-00 USIE-00 CIAE-00 DODE-00

PM-03 H-02 INR-07 NSAE-00 NSC-05 PA-02 PRS-01 SP-02

SS-15 /103 W

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FM USMISSION USUN NEWYORK

TO SECSTATE WASHDC IMMEDIATE 6844

INFO AMEMBASSY THE HAGUE

AMEMBASSY MEXICO CITY

UNCLAS USUN 4499

E.O. 11652: N/A

TAGS: UN, ICJ

SUBJ: UNGA LEGAL COMITE: REVIEW OF ROLE OF ICJ

1. SUMMARY: AT OCT 28 AM LEGAL COMITE MEETING NETHERLANDS FORMALLY INTRODUCED ICJ REVIEW OF ROLE RES (A/C.6/L.987), AND MEXICO INTRODUCED AMENDMENT THERETO (A/C.6/L.989). MEXICO AGREED TO ACCEPT DRAFTING CHANGES, AND PM MEETING OF INTERESTED PARTIES SCHEDULED. AT PM MEETING LANGUAGE PROPOSED BY IRAQ AND KENYA WAS CONSIDERED AS CLOSEST TO ACCEPTABLE COMPROMISE. MANY DELS STATED IT WAS NECESSARY TO SEEK INSTRUCTIONS. USSR AND BRAZILIAN DELS SUGGESTED THEY MIGHT NOT RECEIVE FAVORABLE INSTRUCTIONS. END SUMMARY.

2. AT AM OCT 28 MEETING CHAIR CALLED UPON NETHERLANDS TO FORMALLY INTRODUCE DRAFT RES IT COSPONSORED ON REVIEW OF ROLE OF ICJ (L.987). NETHERLANDS COMMENTS INCLUDED VIEW THAT DRAFT RES WAS CONSENSUS TEXT WORKED OUT BY SEVERAL SESSIONS OF WIDELY REPRESENTATIVE GROUP AND THIS CONSENSUS SHOULD NOT BE UPSET BY ANY AMENDMENTS.

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3. CHAIR THEN CALLED UPON MEXICO WHO INTRODUCED

FOLLOWING AMENDMENT (L.989), NOW COSPONSORED BY KENYA, CONGO, IVORY COAST, BRAZIL AND KUWAIT:

"AFTER SIXTH PREAMBULAR PARAGRAPH INSERT AN ADDITIONAL PARAGRAPH READING AS FOLLOWS:

'CONSIDERING ALSO THAT THE INTERNATIONAL COURT OF JUSTICE SHOULD TAKE INTO ACCOUNT THOSE DEVELOPMENTS IN INTERNATIONAL LAW REFLECTED IN DECLARATIONS AND RESOLUTIONS ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY,"

4. MEXICO DEL GAVE LENGTHY REMARKS WHY ARTICLE 38 OF STATUTE OF ICJ DID NOT CONTAIN REFERENCE TO SUCH DECLARATIONS AND RESOLUTIONS. CONCLUSION OF THESE REMARKS WAS SIMPLY THAT PRESENT UTILITY OF SUCH INSTRUCTIONS IN PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW WAS NOT KNOWN AT TIME OF DRAFTING OF THE STATUTE. COMMENT: MILD MEXICAN STATEMENT CAREFULLY AVOIDED NOTING THAT MEXICAN INTEREST IN CERDS WAS RELATED TO THEIR DESIRE TO EMPHASIZE ROLE OF DECLARATIONS AND RESOLUTIONS. END COMMENT.

5. IN RESPONSE TO NETHERLANDS REQUEST THAT MEXICO AND COSPONSORS WITHDRAW PROPOSAL SINCE (A) PROPOSAL COULD BE CONSTRUED AS ATTEMPT TO INTERPRET OR EXPAND ICJ STATUTE (AND ERGO, UN CHARTER), AND (B) WHEREAS DRAFT RES WAS AIMED AT STATES, AMENDMENT WAS INSTRUCTION FROM GENERAL ASSEMBLY (LEGISLATIVE BODY) TO ICJ (JUDICIAL BODY) ON LAW IT SHOULD APPLY, AND SUCH ACTION INTERFERED WITH PROPER FUNCTIONING OF COURT, MEXICO DEL STATED EMPHATICALLY THAT IT WAS NOT ITS INTENTION TO EXPAND STATUTE OF COURT BY VEHICLE OF THIS PROPOSAL, BUT RATHER INTENTION WAS ONLY TO EMPHASIZE RELEVANCE OF SUCH DECLARATIONS AND RESOLUTIONS TO WORK OF COURT. MEXICO DEL ADDED IT WAS QUITE WILLING TO CONSIDER DRAFTING CHANGES WHICH WOULD MAKE CLEAR THAT PROPOSAL DOES NOT PREJUDICE ARTICLE 38.

6. AT SUGGESTIONS NETHERLANDS, CHAIR INVITED ALL TO PARTICIPATE IN PM OCT 28 DRAFTING MEETING ON MEXICAN UNCLASSIFIED

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PROPOSAL.

7. AT INFORMAL DRAFTING SESSION YASSEEN (IRAQ) AND NJENGA (KENYA) MADE SUGGESTION WHICH RESULTED IN BROAD ACCEPTANCE AD REFERENDUM OF FOLLOWING TEXT:

"RECOGNIZING THAT THE DEVELOPMENT OF INTERNATIONAL LAW MAY BE REFLECTED, INTER ALIA, BY DECLARATIONS AND RESOLUTIONS OF THE GENERAL ASSEMBLY,

WHICH MAY, TO THAT EXTENT, BE TAKEN INTO CONSIDERATION
BY THE ICJ."

8. WHILE WE WOULD PREFER SEEING NOTHING ON THESE LINES
IN RES WE REGARD THIS FORMULATION AS HARMLESS AND INDEED
A VERY CONSERVATIVE FORMULATION OF THE MATTER. CONSEQUENTLY
UNLESS DEPT PERCEIVES OBJECTION WE PLAN RAISE NO OBJECTION TO
AMEND IF OTHERS DON'T.
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